

prior year's shipments be limited because of crop conditions, the Committee may select the total shipments during the months of August and September during one of the three crop years preceding the prior crop year.

[60 FR 39840, Aug. 4, 1995]

§ 989.156 Raisin diversion program.

(a)(1) *Quantity to be diverted.* On or before November 30 of each crop year, the Committee shall announce the quantity of raisins eligible for a raisin diversion program. On or before January 15 of each crop year, the Committee may announce an increase in the tonnage eligible for a raisin diversion program. The quantity eligible for diversion may be announced for any of the following varietal types of raisins: Natural (sun-dried) Seedless, Muscat (including other raisins with seeds), Sultana, Zante Currant, Monukka, and Other Seedless raisins. At the same time the Committee shall determine and announce to producers, handlers, and the cooperative bargaining association(s) the allowable harvest cost to be applicable to such diversion tonnage. The factors to be reviewed by the Committee in determining allowable harvest costs shall include but not be limited to: Costs for picking, turning, rolling, boxing, paper trays, vineyard terracing, hauling to the handler, and crop insurance.

(2) The Committee may limit any season's diversion program to production units on which producers agree to remove the vines. Such restriction shall be announced at the time the tonnage available for that season's diversion program is announced.

(b) *Application for diversion certificates.* Any producer desiring to participate in a raisin diversion program shall file with the Committee, by certified mail, prior to December 20 of the crop year, an application on Form RAC-1000, "Application for Raisin Diversion Certificate" together with a copy of any two of the following four documents: Plot Map from County Hall of Records; irrigation tax bill; county property tax bill; or any other document containing an Appraisal Parcel Number. Such application shall include at least the following information:

(1) The name, address, and telephone number of the producer;

(2) The location and size of the production unit to be diverted;

(3) The raisin production by varietal type on such production unit during the prior crop year or the last crop year eligible for such diversion;

(4) The handler to whom such raisins were delivered;

(5) A statement identifying whether the applicant will remove the vines in the production unit under the program;

(6) A statement that all persons with an equity interest in the grapes in the production unit to be diverted consent to the filing of the application; and

(7) A statement that the producer agrees to comply with the regulations established for a raisin diversion program.

The producer applicant shall sign the application certifying that the information contained therein is true and correct.

(c) *Handling of applications.* After the Committee receives the producer applications, it shall review them to determine whether all the required information has been provided and appears reliable. Any incomplete application shall be returned to the producer applicant for correction together with a statement of the error or omission in the application. The applicant shall have a reasonable opportunity to correct such application. However, such correction must be received by the Committee on or before January 12.

(d) *Priority of applications and allocations of tonnage.* Those producer applications indicating that the vines of the producing units will be removed shall receive first priority over other applicants when reserve tonnage under the program is to be allocated. Grafting vines of one varietal type to another varietal type does not constitute removal under the program. If the production volume in such applications exceeds the amount of diversion tonnage available under the program, a lottery will be held to allocate such diversion tonnage among the applicants. In conducting any lottery under this section, the Committee may group producer applications on a handler-by-handler basis, and separate lotteries will be held for each such group. The

diversion tonnage of raisins available for each such group in each lottery may not exceed the percentage of total handler acquisitions acquired by the group's handler during the previous crop year. To the extent diversion tonnage exists after such group lotteries, such remaining diversion tonnage may be allocated by one lottery of all remaining producer applications. If reserve tonnage exists under the program after the allocation of diversion tonnage has been made to all eligible producer applicants who remove vines, all other applications shall be considered. If the production volume in such applications exceeds the amount of reserve raisin tonnage remaining under the program, a lottery will be held to allocate the remaining diversion tonnage in the manner described above.

(e) *Approval of applications.* The Committee shall notify the applicant for diversion, in writing, as to whether or not the application has been approved. If the application is not approved, the notification shall state the reason(s) for disapproving the application.

(f) *Disclosure of information.* The applicant, whose application has been approved, agrees that by participating in the raisin diversion program, the information in the application may be disclosed to the Committee, its representatives, or agents. The Committee, its representatives, or agents may not use this information for any personal use and shall comply with all applicable provisions pertaining to the unauthorized disclosure of such information.

(g) *Verification.* Any applicant whose application has been approved, authorizes Committee representatives and agents to have access to the production unit in the diversion program during reasonable business hours during the crop year to confirm compliance with the program. Notice will be provided to the applicant of such visits.

(h) *Compliance.* (1) *Methods of diversion.* An approved applicant shall be required to remove the vines, spur-prune the vines, remove the bunches or take other means to preclude grapes from being produced and harvested on the production unit: *Provided*, That vine removal may be the only means of diversion in some seasons as determined and announced by the Committee. Bunches

which occur on vines in an approved production unit shall be removed and destroyed by the applicant before maturity. If the Committee representatives or agents determine that there is an average of more than four bunches per vine remaining on an approved production unit, the producer shall be notified immediately by certified mail, in writing, and given 2 weeks to remove such bunches. Grafting vines of one varietal type to another varietal type does not constitute removal of vines under the program.

(2) *Period of diversion.* An approved applicant must remove the grapes, or vines, indicated on the application within the production unit designated in the application not later than June 1 of the crop year in which a raisin diversion program is implemented. Producers who remove the vines on a production unit after August 15 may qualify for a diversion program for that crop year if a diversion program is announced and if diversion on that unit and vine removal after August 15 can be documented and verified.

(3) *Failure to divert.* Any raisin producer who does not take the necessary measures to remove the grapes on an approved production unit by June 1, or any raisin producer who has indicated the removal of vines or the intent to remove the vines and who does not remove such vines on an approved production unit by June 1, shall not be issued a diversion certificate, may be subject to liquidated damages and interest charges as provided in paragraph (q) of this section, may be subject to an injunctive action under the Act, and may be denied the opportunity to participate in the next diversion program, when implemented: *Provided*, That any producer who has more than one production unit and fails to divert on an approved production unit may be denied the opportunity to participate on all of that producer's production units, in the next diversion program. For spur-pruned vines, this date may be extended 2 weeks from the date of the inspection of a producer's vineyard if more than four bunches on spur-pruned vines are present at the time of inspection.

(i) *Issuance of certificates.* When preliminary percentages are announced,

the Committee shall issue diversion certificates to those approved applicants who have removed grapes in accordance with this section. Such certificates shall represent an amount of reserve tonnage raisins equal to the amount of raisins diverted from the production unit(s) specified in the producer application, or additional quantity granted by the Committee when vines are diverted through vine removal or any other means established by the Committee, as the case may be. If, prior to issuance of a certificate, the Committee is notified by an approved applicant that such applicant's interest in the production unit(s) involved in the program has been transferred to another person, the Committee may substitute the transferee for the applicant provided the transferee agrees to comply with the provisions of this section.

(j) *Submission of diversion certificates from producer to handlers.* Diversion certificates may be submitted by producers only to handlers. The handler shall pay the producer for the free tonnage applicable to the diversion certificate minus the established harvest cost for the entire tonnage shown on the certificate.

(k) *Redemption of certificates.* Any handler holding diversion certificates may redeem such certificates for reserve pool raisins from the Committee. To redeem a certificate, a handler must present the diversion certificate to the Committee and pay the Committee an amount equal to the established harvest costs plus an amount equal to the payment for receiving, storing, fumigating, handling, and inspecting raisins as specified in § 989.401 for the entire tonnage shown on the certificate. Handlers who acquire diversion certificates from producers shall report acquisitions of such certificates and submit them for redemption in a manner and for the reporting periods provided in § 989.173(b) for the acquisition of raisins acquired from producers. The Committee shall issue a reserve release entitling the handler to an amount of reserve pool raisins equal to the entire tonnage shown on the certificate. Upon receipt of the diversion certificate, the Committee shall note on the certificate that it is cancelled. Diversion cer-

tificates will only be valid and honored if presented to the Committee for redemption on or before December 15 of the crop year for which they were issued.

(l) *Lost, damaged, or destroyed certificates.* The Committee should be notified of any lost, damaged, or destroyed certificates as quickly as possible by a handler or producer so that appropriate measures such as issuing new certificates may be taken.

(m) *Appeals.* If a determination is made by the Committee that a producer has not complied with these regulations and is not entitled to a diversion certificate, that a producer is subject to liquidated damages and interest or that a producer is denied the opportunity to participate in the next RDP, such producer may request a hearing before an appeals subcommittee established by the Committee. If a producer disagrees with the subcommittee's decision, the producer may request the Committee to review the subcommittee's decision. If the producer disagrees with the Committee's decision upon review, the producer may, through the Committee, request the Secretary's review of the decision.

(n) *Voiding certificates.* If, subsequent to a diversion certificate being issued to a producer but before it has been submitted to a handler, the Committee determines that the producer did not comply with these regulations, it shall void the certificate.

(o) *Production unit.* For the purposes of the raisin diversion program, a production unit is a clearly defined geographic area with permanent boundaries (either natural or man-made). A producer must be able to document to the Committee the previous year's production data for that specific area by means of sales receipts or other delivery or transfer documents which indicate the creditable fruit weight delivered to handlers from that specific area. If the information submitted by producers on the application concerning a unit's production is significantly greater than past production on the unit, production on neighboring units, or the industry norm, or the production is unable to be verified based on

submitted documentation, the Committee may request additional documentation such as tray count, payroll records, prior years' production, and insurance records to substantiate the tonnage of raisins produced on all production units that such applicant controls or owns. Producers' would not be precluded from submitting other information substantiating production if those producers' desired. A new production unit will not be eligible for the raisin diversion program until at least 1 year's production has been grown and is documented. An existing production unit, transferred to a new or expanding producer, is eligible for the raisin diversion program as soon as the previous year's production can be properly documented.

(p) *Handling of reserve pool tonnage released when diversion certificates are redeemed.* Handlers shall comply with the applicable provisions of the order and administrative rules and regulations for the reserve pool tonnage released under the raisin diversion program in the same manner as raisins acquired from producers. Such provisions shall include, but not be limited to, reporting, satisfying reserve pool obligations, payment of assessments, storing reserve tonnage, and the remedies in the event of failure to deliver reserve tonnage raisins.

(q) *Liquidated damages and interest charges.* By applying to participate in a raisin diversion program, an applicant agrees that the failure of the approved applicant to timely remove the vines or grapes will cause serious and substantial damage to the program and the raisin industry and that, in consideration of the approval of the application, such applicant will pay liquidated damages and interest to the Committee, in the event of such failure to timely remove vines or grapes. Since it would be difficult, if not impossible, to determine the amount of such liquidated damages, the following amount, which is a fair measure of damages and not a penalty, shall apply:

(1) The amount of the liquidated damages shall be computed by multiplying the tonnage on the approved diversion application (Form RAC-1000) by the harvest cost determined and announced by the Committee.

(2) Each approved applicant shall, with the respect to liquidated damages not paid by July 1, pay to the Committee interest on such unpaid liquidated damages at the rate of the prime rate of the bank in which the Committee has its reserve pool funds deposited, on the day the liquidated damages become delinquent, plus 2 percent, and further such rate of interest shall be added to the unpaid amount, monthly, until the liquidated damages plus applicable interest are paid.

(3) Liquidated damages and interest collected by the Committee pursuant to this subparagraph shall be deposited in the reserve pool fund of the reserve pool applicable to the particular diversion program and be distributed to the equity holders in that pool.

(r) *Notification.* If any changes are made in the terms and conditions of the diversion program after a producer's application has been approved, the Committee will notify the producer of such changes and the producer will be given 10 calendar days to agree to the revised terms, or to withdraw from the program. Failure of the producer to notify the Committee in writing of its intention to withdraw from the program within 10 calendar days from the date of the Committee's notice will constitute agreement to the revised terms and conditions.

(s) *Additional opportunity for vine removal.* (1) The Committee may announce a date later than that provided in § 989.156(b), by which producers, who agree to remove the vines on a production unit may file an application to participate in a raisin diversion program. The announced date shall be not later than May 1. The diversion certificates will be issued only for the production units from which vines are removed. The total tonnage available to such applicants shall not exceed the tonnage determined by deducting the tonnage approved for applications received on or before December 20 from the total tonnage announced as eligible by the Committee for diversion. Applications shall be considered and approved on a first-come, first-served, basis and shall not be given preference over the tonnage approved for applications received on or before December 20. The vines shall be removed from the

production units for which such applications are approved not later than June 1.

(2) Producers who agree to remove the vines pursuant to this paragraph shall notify the Committee in advance of the date when such vines will be removed in order to allow a representative of the Committee to observe and verify such vine removal.

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§ 989.157 Raisins produced from grapes grown outside of California.

(a) Any raisins produced from grapes grown outside the State of California that are received by a handler shall be observed and marked for identification by an inspector. As provided in § 989.173(b)(7), the inspection service may request information needed to properly mark such raisins for identification; it shall be the handler's responsibility to arrange for such identification and furnish required documentation promptly.

(b) In the absence of an inspector to observe and mark such raisins for identification, the handler shall not permit the unloading to occur unless the handler has a written statement from the inspection service that an inspector cannot be furnished within a reasonable time: *Provided*, That raisins so unloaded shall be observed and marked properly upon an inspector being available.

(c) The handler shall notify the inspection service in writing at least one business day in advance of the time such handler plans to begin receiving raisins produced from grapes grown outside the State of California, unless a shorter period is acceptable to the inspection service.

(d) Raisins produced from grapes grown outside of the State of California and received by a handler shall be marked for identification by the inspector affixing to one container on each pallet or to each bin in each lot a prenumbered RAC control card (to be furnished by the Committee) which shall remain affixed until the raisins

are processed and disposed of or disposed of as natural condition raisins. The cards shall be removed only by an inspector of the inspection service or authorized Committee personnel.

(e) Each handler shall store raisins produced from grapes grown outside the State of California separate and apart from all other raisins held by such handler to the satisfaction of the Committee. Storage of such raisins shall be deemed "separate and apart" if the containers are marked as raisins produced from grapes grown outside the State of California and placed so as to be readily and clearly identified.

(f) Any raisins received by a handler produced from grapes grown outside the State of California shall be processed and/or disposed of under the surveillance of the inspection service. The handler shall notify the inspection service in writing at least one business day in advance of the time such processing and/or disposition will occur, unless a shorter period is acceptable to the inspection service.

(g) The handler receiving raisins produced from grapes grown outside of California shall pay fees assessed by the inspection service to identify and maintain surveillance of such raisins.

[55 FR 28019, July 9, 1990]

§ 989.158 Natural condition raisins.

(a) *Incoming inspection.* (1)(i) The Committee shall, upon request of a handler who complies with the requirements of this part with respect to inspection points, designate as his inspection point any place (including his plant or receiving station) where the handler receives raisins.

(ii) Each handler shall, at his expense, provide at each of his inspection points reasonably safe and adequate facilities for receiving raisins, drawing samples, and efficient inspection of natural condition raisins. At the time of inspection of any lot, the handler shall, at his expense, provide the inspector with any assistance necessary in the inspection of the raisins, including the movement of individual containers. Each handler, other than a processor, shall maintain with the Committee a current written description, defining the boundaries and other